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SUBJECT: Strategic Economic Dialogue Meeting on Transparency in Administrative Licensing

(U) Sensitive but unclassified. Not for dissemination outside USG channels. Not for Internet distribution.

**¶1.** (SBU) Summary: U.S. and Chinese Government and industry representatives met October 29-30 to discuss transparency in administrative licensing, an outcome from the second round of the Strategic Economic Dialogue (SED) held in May. The sides exchanged information on general licensing requirements in each country and on the conditions, procedures, and timeframes for obtaining licenses in the construction, design, engineering, and surety sectors. The meeting also included a visit to the Tianjin Administrative Licensing Center, which serves as a One-stop-shop for obtaining administrative licenses from over 70 agencies in Tianjin. End Summary.

SED Administrative Licensing Seminar

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**¶2.** (U) On October 29-30, Department of Commerce Deputy General Counsel David Bowsher and other U.S. Government and industry representatives participated in a meeting with officials from China's State Council Legislative Affairs Office and other government agencies. The meeting, which focused on exchanging information on the conditions, procedures, and timeframes for obtaining administrative licenses, was the first of two meetings to carryout agreed-upon outcomes from the second meeting of the Strategic Economic Dialogue (SED) held in May.

**¶3.** (U) During the meeting, experts from both governments presented on general licensing requirements in both countries that are applicable to and guide licensing processes. Mr. Bowsher presented information on federal licensing regimes in the United States, particularly focusing on how the Due Process Clause of the U.S. Constitution and the Administrative Procedure Act ensure that federal licensing regimes are transparent.

**¶4.** (SBU) Representatives from the Chinese Government discussed China's Law on Administrative Licensing (Licensing Law) and its requirements to ensure transparency. The

Licensing Law became effective in July 2004 and contains provisions that allow administrative authorities to reduce the number of licensing regimes and increase transparency of remaining regimes. The Licensing Law specifically requires administrative authorities to publish all requirements and procedures necessary to obtain a license and forbids decision-making based on unpublished requirements. In addition, the Licensing Law requires administrative authorities to provide written justification for rejecting an application and provides methods of recourse for adverse decisions, including administrative reconsideration and judicial review.

**¶15.** (SBU) Officials from both governments expressed an interest in discussing the application of general licensing requirements to non-government organizations -- such as industry associations -- that administer licensing regimes. Articles 13 and 21 of the Licensing Law allows administrative authorities to eliminate licensing regimes when other methods may better regulate a specific matter. The U.S. officials specifically noted that this practice has been implemented in the freight forwarding sector and has resulted in a lack of transparency in the licensing process. U.S. and Chinese officials agreed that this could serve as a discussion topic in future exchanges on licensing.

#### Construction Sector Licensing

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**¶16.** (SBU) Government officials and industry

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representatives also exchanged information on the licensing regimes for construction, engineering, design, and surety companies and industry's experiences with obtaining licenses in those areas. Ministry of Construction, Department of Market Administration Deputy Division Chief Wang Wei discussed China's efforts to implement its WTO commitments in this area through the development of new regulations and licensing regimes for the aforementioned sectors.

According to Mr. Wang, the new regimes and accompanying implementing regulations level the playing field for foreign-invested construction, design, and engineering companies. Foreign-invested companies in these sectors must first establish themselves as legal entities in China and may then apply for a license. Mr. Wang reported that the licensing conditions, procedures, and timeframes are the same as those for domestic companies.

**¶17.** (SBU) Mr. Wang provided specific information on Decree 114 and its implementing regulations, which regulate the design and engineering sector in China. To apply for a 114 grade A license, a foreign-invested or domestic company that is currently applying for a license must establish a performance record in China that illustrates the company's engineering experience. This is supposed to be done through operating under a grade B license. According to Mr. Wang, the new regime facilitates the process of moving from a grade B to a grade A license by eliminating the former requirement to operate under a grade B license for two years before applying for a grade A license. However, Mr. Wang did not specify a timeframe. Additionally, the Ministry of Construction will also consider the foreign experience of companies when reviewing an application for a grade A license.

¶ 8. (SBU) Representatives from Bechtel informed Mr. Wang that they were currently having difficulties with their 114 grade A license application. Bechtel sought to apply for a 114 grade A license and was told that they must first operate under a grade B license because Bechtel's license under the previous licensing regime, Decree 32, was only a construction license, not an engineering license. Mr. Wang agreed to follow-up with Bechtel on their specific issue. Note: Bechtel is not interested in a Decree 113 A or Level 1 construction license as this type of license restricts projects that are at or below five times registered capital.

¶ 9. (SBU) One panelist emphasized that while several firms are applying for qualification certificates under Decree 114, the implementation rules for Decree 155 in relation to construction supervision have not yet been released so applications cannot be made by foreign companies interested in construction supervision. Moreover, the lack of a licensing regime for project management and engineering, procurement, and construction (EPC) projects prevents foreign firms from providing integrated project solutions -- an area where foreign experience and expertise is of the greatest benefit to Chinese construction and design companies, he argued. Several panelists stated that Circular 200 which relates to project management, issued by MCON in December 2004, prevents foreign firms from competing in China. Circular 200 requires foreign firms to obtain qualification certificates based on one or more of the existing six qualification regimes, namely design, construction, survey, supervision, cost advisory and tendering agency qualifications. This cumbersome process discourages the development of project management enterprises and the integrated implementation of projects, they said.

¶ 10. (SBU) Chinese officials asked for the U.S. Government officials to present information on

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the U.S. visa policy, asserting that visa issuance was a form of administrative licensing that was of great interest to Chinese travelers. In addition, the officials asserted that the lack of clarity in the visa issuance standards and process resulted in confusion and that increasing transparency could help increase business relations. U.S. Government officials responded by noting that if the Chinese Government and industry wanted additional information on the visa issuance process, they would relay the request to the appropriate officials at the U.S. Embassy and coordinate information sharing on the policy. The Chinese responded by identifying this as a possible concrete deliverable to announce at SED III.

Tianjin Licensing Center

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¶ 11. (U) On October 30, the U.S. and Chinese delegations visited the Tianjin Administrative Licensing Center, which serves as a central location to gather information on administrative licensing regimes as well as to file applications under those regimes. The Center administers licensing regimes from over 70 local administrative agencies. The Center tracks the review process to ensure that applications are

reviewed within the specific timeframes applicable to each licensing regime. To facilitate transparent review, applicants can track the status of their applications through the CenterQs website.

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